in writing only, whereas, in section 17, a writing is one of various alternatives. A comparison of these alternatives ("accept part of the goods so sold and actually receive the same, or give something in earnest to bind the bargain, or in part of payment"), with the things named in our old books as the badges of a completed transaction of sale (Glanvil, Book x. ch. 14; Bracton, 61 *b*), shows, not so much a close resemblance, as substantial identity. The old writers speak of payment (wholly or in part), earnest, and *traditio*. What the expression "acceptance and actual receipt" in section 17 means is a matter still in debate; but the conjecture is more than probable that the writer of the section meant to indicate in an emphatic way the old *traditio*. Apart from the writing, then, the alternatives of section 17, being of equal operation with a writing, appear to correspond to the old common law emblems of an executed transaction of sale; for by the common law, though the power of two persons was always recognized to pass and receive title at once by parol, if that were their intention, such an intention was not supposed to exist without some of these badges of a completed sale. As these requisites were the marks of a sale as distinguished from an agreement to sell, it is not unnatural that section 17 should have been formerly supposed to apply to executed transactions only. There is, indeed, considerable reason to think, as an original question, that such was the intention of the drawers of the statute, clearly as the interpretation is now settled to the contrary. Observe that executory contracts of sale are included within the provision as to contracts not to be performed within a year; and that the maxim *noscitur a sociis* would put upon section 17 the interpretation of meaning an executed sale, because that part of the statute is occupied with devises, trusts, judgments, and the like — things that operate as conveyances and carry title.

It is very important to take a general view of the Statute of Frauds, so as to avoid the two narrow interpretation frequently put upon it; to escape, for example, saying, with Lord Campbell, in *Morton* v. *Tibbett* (15 Q. B. 428, 431), that "acceptance under the statute is merely instead of a memorandum." It might be said with as much truth that a memorandum is merely instead of acceptance; the separate requirements of section 17 are perfectly distinct, and each stands on its own footing. The considerations applicable to one may be inapplicable to another.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

BAILMENT — NEGLIGENCE — COLLATERAL SECURITY. — A bank is not a gratuitous bailee of collateral security, but is responsible for the want of reasonable and ordinary care in its custody. Where it appears that no record or account of such securities was kept, and no examination in relationship thereto was made, except once in six months, a lack of ordinary care is shown. *Ouderkirk* v. *Central Nat. Bank*, 23 N. E. Rep. 875 (N. Y.).

COMMON CARRIERS— CONTRACT RESTRAINING BUSINESS.—Owners of rival steamboats agree to share profits, etc., in a certain way, and also that if either wishes to sell with a view to going out of the trade, notice should be given to the owners of the other boat, and the owner so selling should not enter the trade again within one year. *Held*, that this agreement is void, as it is against public policy as restraining trade. *Anderson* v. *Jett et al.*, 12 S. W. Rep. 670 (Ky.).

COMMON CARRIERS—DISCRIMINATION—TANK CARS—QUO WARRANTO.—The defendant company was accustomed to charge a much lower rate for oil shipped in tank cars owned by the shipper than for oil in barrels shipped in the cars of the company. *Held*, that no discrimination could be made in favor of those shipping in their own cars, as it is the duty of the carrier to provide suitable cars, and therefore the company must either charge the same rate for both methods, or else supply tank cars for all. *State* v. *Cincinnati Ry. Co.*, 23 N. E. Rep. 928 (Ohio).

CONSTITUTIONAL LAW — FULL FAITH AND CREDIT TO BE GIVEN TO THE RECORDS OF ANOTHER STATE.—A, a resident of Massachusetts, learning that his debtor B., also a resident of Massachusetts, had stopped payment, assigned his claim without consideration to C., a citizen of New York, who served a garnishee process on D., a debtor of B. in New York. The plaintiffs, B.'s assignees in insolvency, brought a bill in equity to restrain A. from prosecuting the attachments made in New York. The Massachusetts court granted a decree. *Cunningham* v. *Butler*, 142 Mass. 47. *Held*, *per* Fuller, C. J., the judgment should be affirmed. A court of equity has the power to restrain any one within its jurisdiction from doing acts abroad. The record of the New York court disclosed an inchoate lien in favor of A. If, for any cause, however, he had failed in his action, the lien would have fallen with it. Accordingly, when the Massachusetts court restrained A. from prosecuting his suit to judgment, the attachment of itself dissolved, and the Massachusetts court had in no way impeached the New York record. *Cole* v. *Cunningham*, 10 Sup. Ct. Rep. 269. Miller, Field, and Harlan, JJ., dissenting.

The discussion presented in this case suggests a line for the classification of the authorities upon this interesting point in constitutional law. It would seem that the cases which have arisen under the provision in question might be divided into two classes: (1.) Cases in which it is said that the State court has done no act which disregards the record of another State. (2.) Cases in which it is allowable to do such an act, even though it clearly disregards the record.

The above case belongs in the first class. The Massachusetts court simply exercised its acknowledged jurisdiction *in personam*, and in no way denied what the New York record showed,—an inchoate lien. So the pendency of a suit in one State is not a bar to an action between the same parties and upon the same subject-matter brought in another State. *Stanton* v. *Embrey*, 93 U. S. 548; *Memphis R. Co.* v. *Grayson*, 7 So. Rep. 122. A foreign judgment does not necessarily enjoy the same priority, privilege, or lien as to goods situated in another State, which would be given it in the State where it was pronounced. Story, Confl. Laws, § 609.

(2.) The other class of cases. As to those facts upon which the foreign court based its jurisdiction of the parties or subject-matter of the suit, the court of another State may directly contradict the recitals in the foreign judgment. *Thompson* v. *Whitman*, 18 Wall. 457; *Pennywit* v. *Foote*, 27 O. St. 600. There are many dicta that the record of another State may be impeached on the simple ground of fraud; but in most, if not all cases, the decisions may be placed upon the more clearly defined ground of lack of jurisdiction. *People* v. *Dawell*, 25 Mich. 247.

It would seem that the mere fact that a citizen of one State goes into another to evade the laws of his own State, is not sufficient fraud to justify the disregard of a judgment obtained in the court of the foreign State. *Lawrence* v. *Batchelder*, 131 Mass. 504; *Green* v. *Van Buskirk*, 7 Wall. 139.

For the authorities, see Cooley, Cons. Lim. *17, n. 1; Story, Confl. Laws, §§608–9, and notes.

CONSTITUTIONAL LAW — LIBERTY — POLICE POWER.—A clause of the code of West Virginia which provides that no person without a State license shall "keep in his possession for another spirituous liquors," is unconstitutional and void. It is contrary to the fourteenth amendment to the Constitution of the United States, and cannot be justified as an exercise of the police power. *State* v. *Gilman*, 10 S. E. Rep. 283 (W. Va.).

CONSTITUTIONAL LAW — REGISTRATION LAWS.— The constitution of Michigan gives the right to vote to every citizen, subject to certain qualifications which are unimportant. *Held*, that an act which required all electors to register, and which provided five days for registration before the day of election, was unconstitutional because it gave no opportunity for registration to sick or absent persons, and because it unnecessarily impeded the right of voting by requiring persons whose business might perhaps call them abroad to return on one day to register and on another day to vote. *Attorney-General* v. *City of Detroit*, 44 N. W. Rep. 388 (Mich.)

CONSTITUTIONAL LAW — SECTARIAN SCHOOLS. — Reading from the Bible without comment is sectarian instruction within the meaning of a clause in the Constitution prohibiting sectarian instruction in the common schools. Such reading from the Bible by teachers in the public schools is also repugnant to a clause in the Constitution providing that " no man shall be compelled to . . . erect or support any place of worship. " *State* v. *District Board of School Dist. No. 8*, 44 N. W. Rep. 967 (Wis.).

CONVERSION — TENANTS IN COMMON — GRAIN ELEVATORS. — It is provided by statute that grain depositors are tenants in common. *Held*, that where the warehouseman sells grain to a greater amount than his share of the deposits, the purchaser is guilty of conversion, and acquires no title. The court recognize the fact that this is an inconvenient rule, since it is the common custom for warehousemen to sell without regard to their outstanding receipts. *Hall* v. *Pillsbury et al.*, 44 N. W. Rep. 673 (Minn.).

EVIDENCE — DYING DECLARATIONS. — In a trial for murder, statements by the deceased to a physician some hours after being shot, were offered in evidence as dying declarations. It appeared that he had not been informed that he was going to die, nor had he expressed any opinion to that effect, but he had expressed regrets at being taken away from the support of his family. He died shortly afterward. *Held*, reversing conviction below, that his statements as to the manner of his injury were not admissible. *Starks* v. *State*, 6 So. Rep. 843 (Miss.).

EVIDENCE — PRIVILEGED COMMUNICATIONS.—In an action for negligence, the physician who dressed the plaintiff's wounds testified that, in answer to his question as to the cause of the accident, the plaintiff told him that it was his own fault, etc. *Held*, the evidence should not have been admitted, for it is conclusively presumed that the physician will only ask such questions as are necessary to enable him to discover the nature of his patient's injury. *Pennsylvania Co.* v. *Marion*, 23 N. E. Rep. 973 (Ind.).

INNKEEPERS.— LOSS OF BAGGAGE.—On stepping from the train, a porter bearing the name of the defendant's hotel on his cap directed the plaintiff to an omnibus which was to take him to the hotel. The plaintiff, knowing nothing of the actual authority of the porter or by whom the omnibuses were run, gave the porter the check for his valise. The porter said it would come right along in another wagon ; but it was lost. *Held*, the defendant was liable, and whether the porter was authorized only to solicit patronage and not to receive baggage, or whether the omnibuses were run by independent contractors under an arrangement with the defendant or by the defendant himself, was immaterial. *Coskery* v. *Nagle*, 10 S. E. Rep. 491 (Ga.).

INSURANCE — PAYMENT OF PREMIUM TO AGENT. — An insurance agent had authority to issue policies, and to collect and remit premiums. He had in his possession money belonging to the defendant, a holder of a policy. By agreement with the defendant, that money, to the extent of the premium, was to be applied in payment of the premium. *Held*, there was a sufficient payment of the premium to bind the company. *Phœnix Ins. Co.* v. *Meier*, 44 N. W. Rep. 97 (Neb.).

LEGAL TENDER — STREET-RAILWAY COMPANIES. —So long as a silver coin is worn by natural abrasion only, and is not appreciably diminished in weight, it is legal tender ; and if a passenger is ejected from a street car for refusal to make payment of fare other than by such coin, he may have action for damages. *Morgan* v. *Jersey City & B. R. Co.*, 18 Atl. Rep. 904 (N. J.).

LIBEL — PUBLICATION. — A letter contained libellous matter about the person to whom it was sent. He was so illiterate as to be obliged to have another party read it for him. *Held*, a publication. *Allen* v. *Wortham*, 13 S. W. Rep. 73 (Ky.).

NAVIGABLE STREAM — RIGHT OF ACTION FOR OBSTRUCTION. — The plaintiffs were riparian owners on the banks of a navigable stream. They alleged that the defendant had obstructed this stream so that the plaintiffs were unable to transport certain wood which was piled upon their land, and which they owned, whereby the wood became rotted and greatly depreciated in value. There were also allegations of other special damage. It was *held* that the plaintiffs could not maintain this action. For the right of navigation is a public right, and an obstruction of navigation is, in the absence of special circumstances, a public nuisance, but not a private wrong. To maintain a private action, damage differing in kind from that suffered by the rest of the public having occasion to use the stream must be shown, and not merely damage greater in degree. "To constitute special damage there must be an invasion or violation of some private right of the individual, as distinguished from the public right which he has of using a public highway in common with the rest of the public." *Swanson et al.* v. *Mississippi R. R. Boom Co.*, 44 N. W. Rep. 986 (Minn.).

NEGLIGENCE — STATUTORY ACTION FOR DEATH OF HUMAN BEING — MEASURE OF DAMAGES. — In an action by a husband for the negligent killing of his wife, evidence that after marriage there was a marked change for the better in the husband's habits and in his pecuniary affairs is admissible on the question of damages. The statutes giving an action for the death of a human being afford compensation unknown to the common law, and are not to be confined to mere pecuniary damage. *Simmons* v. *McConnell, adm'r*, 10 S. E. Rep. 838 (Va.).

NEGLIGENCE — SUNDAY LAWS. — Violation of the statute prohibiting unnecessary travel on Sunday will not preclude recovery for an injury received through the defendant's negligence. The plaintiff's illegal conduct is a condition, not a cause, of the injury. *D. L. & W. R. R. Co.* v. *Trautwein*, 19 Atl. Rep. 178 (N. J.).

NOTARIES PUBLIC — ELIGIBILITY OF WOMEN. — Women are not, in the absence of statute, eligible as notaries public; and the statute authorizing their appointment as attorneys and justices of the peace does not change the rule. *Opinion of the Justices*, 23 N. E. Rep. 850 (Mass.).

PENSIONS — EXEMPTION FROM ATTACHMENT. — A statute of Iowa provides that pensions shall be exempt from attachment, not only when in the "actual possession" of the pensioner, but also when "invested" by him. Under this statute the court held that where pension money was invested in the services of a stallion the colts gotten were exempt from attachment. *Diamond* v. *Palmer* 44 N. W. Rep. 819 (Ia.).

QUASI-CONTRACTS — COMPENSATION FOR SERVICES. — The plaintiff, a step-daughter, lived with her step-father from the time she was 9 years old till she married, at 26; she lived as a member of the family, doing housework, receiving her board and clothing, and money from time to time; she now seeks to recover wages for services rendered after she became of age. *Held*, she must show an express promise by her step-father to pay wages; the facts, as above stated, are not such as to raise a promise implied by law. *Harris* v. *Smith*, 44 N. W. Rep. 169 (Mich.).

QUASI-CONTRACTS — INSANITY — NECESSARIES. — An obligation will be implied against the estate of a lunatic to repay sums expended to provide her with necessaries. *In re Rhodes*, 38 W. R. 385 (Eng.). See to the same effect *In re Renz*, 44 N. W. Rep. 598 (Mich.).

REAL PROPERTY — DEEDS — DELIVERY. — A married woman, for the purpose of putting her land out of the reach of her husband, executed a conveyance thereof to her children, reserving a life estate to herself. She signed and acknowledged the deed, and caused it to be recorded; but took possession of it, intending to keep it until her death. The children, who were with one exception infants, knew of and assented to the conveyance. *Held*, these facts constituted *prima facie* a delivery and acceptance of the deed. *Coler* v. *Coler et al.*, 23 N. E. Rep. 687 (Ind.).

REAL PROPERTY — EASEMENTS — INCHOATE RIGHT. — A statute provided that on purchase of certain lands all rights or easements relating to it should be extinguished on compensation for loss thus inflicted. The plaintiffs' house was built in 1867. The purchase referred to by the statute was made in 1877. *Held*, that the inchoate right to light was extinguished, and compensation due the plaintiffs therefor. *Barlow* v. *Ross*, 24 Q. B. Div. 381 (Eng.).

REAL PROPERTY — EMINENT DOMAIN — COMPENSATION. — A school district purchased a "squatter" title to certain land and built a school-house thereon. The real title was in one S., against whom proceedings were now instituted to get the land by the right of eminent domain. *Held*, that although the legal title to the school-house had vested in S., the "just compensation" to be allowed him would not include compensation for the building. *Searl* v. *School District No.* 2, 10 Sup. Ct. Rep. 374.

REAL PROPERTY — INJURY TO REVERSION — MEASURE OF DAMAGES. — In a suit for damages for injury to the land, only nominal damages can be recovered in the first action for the injury to the reversion; if the obstruction be continued thereafter, vindictive damages can be recovered in a second suit to compel the removal of the same. *Mason* v. *Norfolk Ry. Co.*, 26 Can. L. J. 185.

REAL PROPERTY — MORTGAGE — SALE UNDER POWER. — A mortgagee had purchased at his own sale, under a power which did not authorize him to become the purchaser. *Held*, that the infant heirs of the mortgagor, who was dead at the time of the sale, could disaffirm it any time within two years after attaining their majority, provided twenty years had not elapsed. *Alexander* v. *Hill*, 7 So. Rep. 238 (Ala.).

REAL PROPERTY — PERPETUITIES. — A. devised real estate to trustees in fee for B. for life; remainder for life to B.'s children, successively; remainder in fee as the longest liver of B. and his children should by will appoint. *Held*, (overruling *Avern* v. *Lloyd*, L. R. 5 Eq. 383), that although the survivor would have an absolute interest, still as he was not necessarily ascertainable within lives in being and twenty-one years, the power was void. *In re Hargreaves*, 43 Ch. Div. 401 (Eng.). For a full discussion of *Avern* v. *Lloyd* see Gray, Perp., chap. vii.

REAL PROPERTY — PRE-EMPTION. — A. settled on land to secure it under the United States pre-emption laws. She died a year later. Her administrator had the patent made out to the heirs, and later got an order from the Probate Court to sell it to pay A's debts. *Held*, that the land never was the property of A. and could not be sold for her debts. *Coulson* v. *Wing*, 22 Pac. Rep. 570 (Kan.).

REAL PROPERTY — RIGHTS OF INNOCENT DISSEISORS. — A mortgagee in possession under a void foreclosure erected a dwelling-house on the land supposing himself to be the absolute owner. Finding out his mistake, he removed the house, doing no damage to the land. *Held*, that on these facts the mortgagee had the right of removal. *Cook* v. *Cooper*, 22 Pac. Rep. 945 (Oreg.).

REAL PROPERTY — RIGHTS OF TRAITOR IN CONFISCATED PROPERTY. — Property was confiscated and sold for the treason of the owner, under the United States statutes authorizing such confiscation for the term of the owner's life. The owner was subsequently pardoned, and then conveyed all his right, title, and interest in the property. Defendant claims under this conveyance. Action by the heirs of the original owner. *Held*, that the removal of his disabilities by pardon invested in plaintiff's ancestor the power of disposition over the reversion of the property, expectant upon the termination of the confiscated estate, that power having been in suspension during his disability. *Semble*, the reversion in fee remained in the original owner after the confiscation proceedings, though he had no power of disposing of it while he was under disabilities. *Illinois C. R. Co., et al.* v. *Bosworth et al.*, 10 Sup. Ct. Rep. 231,

SALE — CUSTOM OF TRADE. — Held, a custom of trade among the corn merchants of Augusta would bind only those who had recognized it in their own transactions. *Semble*, it is not enough to show that both the contracting parties were aware of the custom. *Miller* v. *Moore*, 10 S. E. Rep. 360 (Ga.).

TORT — CONTRIBUTORY NEGLIGENCE. — It is not contributory negligence in a person to risk his life or place himself in a position of great danger in an attempt to save another from death or great bodily harm, provided such acts do not constitute rashness. *Peyton* v. *Texas & P. Ry. Co.*, 6 So. Rep. 690 (La.). Following *Eckert* v. *Railroad Co.*, 43 N. Y. 503.